

**Liberty Mutual Fire Insurance Company  
175 Berkeley Street  
Boston MA 02117**

**NAIC COMPANY 23035**

**MARKET CONDUCT EXAMINATION REPORT  
as of December 31, 2003**

**COLORADO DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE**

**PREPARED BY INDEPENDENT CONTRACTORS FOR  
COLORADO DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE**

**Liberty Mutual Fire Insurance Company  
175 Berkeley St. Boston, MA 02117**

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EXAMINATION REPORT  
as of  
December 31, 2003**

**Prepared by**

**Gary L. Domer, CIE**

**James H. Daughan, CPCU, CIE, AIM**

**Independent Contract Examiners**

May 26, 2004

The Honorable Douglas Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner Dean:

In accordance with Sections 10-1-203, C.R.S. and 10-3-1106, C.R.S., an examination of selected underwriting and claims practices of the Liberty Mutual Fire Insurance Company's private passenger automobile business has been conducted. The Company's records were examined at the Regional Offices located at 2875 Brownbridge Rd., Gainesville, GA 30504 and 10770 E. Briarwood Ave, Ste. 200, Englewood, CO 80112. The examination covered a twelve month period from January 1, 2003, to December 31, 2003.

A report of the examination of the Liberty Mutual Fire Insurance Company is, herewith, respectfully submitted.

Gary L. Domer, CIE  
James H. Daughan, CPCU, CIE, AIM

Independent Market Conduct Examiners

**MARKET CONDUCT  
EXAMINATION REPORT  
OF  
Liberty Mutual Fire Insurance Company**

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**COMPANY PROFILE**

## Liberty Mutual Fire Insurance Company

The Liberty Mutual Fire Insurance Company was incorporated on October 31, 1908 under the laws of Massachusetts as United Druggists Mutual Fire Insurance Company. The Company was licensed in Colorado in 1929. On March 19, 2002, the Company reorganized from a mutual insurance company to a stock insurance company.

Practically all lines of insurance, except title and the Accident and Health lines are written by the Company which is licensed in all states and the District of Columbia.

In 2003 the Company had 20,502 private passenger automobile policies in force in Colorado.\* The Company reported \$34,909,000 in private passenger automobile written premium in Colorado during 2003, representing a 1.21 % market share of all private passenger automobile insurance written in Colorado during 2003.\*\*

\*Data as reported by the Company

\*\*Data as reported in the Colorado Insurance Industry Statistical report

### **PURPOSE AND SCOPE OF EXAMINATION**

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law, Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to automobile insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report

The examination was governed by, and was performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered twelve months of the Company's operations, from January 1, 2003, to December 31, 2003.

File sampling was based on a review of underwriting and claim files systematically selected from file runs provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any findings were noted on a comment form and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form the Company had the opportunity to respond and was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of the examination the Company was provided a summary of the findings.

The examination report is a report by exception and much of the material reviewed is not addressed in the written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines. When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses only Private Passenger Automobile issues and contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following five (5) Company operations:

1. Company Operations and Management
2. Complaint Handling
3. Producers
4. Underwriting and Rating
5. Claims

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

**EXAMINERS' METHODOLOGY**

The examiners reviewed the Company's Private Passenger Automobile underwriting and claims practices to determine compliance with the Colorado insurance law.

**Exhibit 1**

<b>Law</b>	<b>Subject</b>
Section 10-1-205	Financial Examination Reports
Section 10-1-203	Authority, scope, and scheduling of examinations
Section 10-3-1104.	Unfair methods of competition and unfair or deceptive acts or practices
Section 10-3-1103.	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1106	Power of Commissioner
Section 10-3-1107	Hearings
Section 10-3-1108	Orders
Section 10-3-1109	Penalty for violation of cease and desist orders
Section 10-4-401	Purpose-applicability
Section 10-4-602.	Basis for Cancellation.
Section 10-4-603.	Notice.
Section 10-4-604.	Nonrenewal.
Section 10-4-605.	Proof of notice.
Section 10-4-609.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610.	Property damage protection against uninsured motorists.
Section 10-4-611.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613.	Glass repair and replacement.
Section 10-4-614.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-706.	Required coverages - complying policies - PIP examination program.
Section 10-4-618	Unfair or discriminatory trade practices-legislative declaration
Section 10-4-619	Coverage compulsory
Section 10-4-620	Required Coverage
Section 10-4-621	Required Coverages are minimum
Section 10-4-622	Required provision for intrastate and interstate operation
Section 10-4-623	Conditions and exclusions
Section 10-4-624	Self-insurers
Section 10-4-625	Quarterly premium payments
Section 10-4-626	Prohibited reasons for non-renewal or refusal to write a policy
Section 10-4-627	Discriminatory standards-premiums-surcharges-proof of financial resp.
Section 10-4-628	Refusal to write-changes in-cancellation-non-renewal of policies
Section 10-4-629	Cancellation-renewal-reclassification
Section 10-4-630	Exclusion of named driver
Section 10-4-631	Insurers to file rate schedule
Section 10-4-632	Reduction in rates for drivers 55 years or older/drivers ed course
Section 10-4-633	Certification of policy and notice forms
Section 10-4-706.5.	Operator's policy of insurance.
Section 10-4-707.5.	Ridesharing arrangements - benefits payable - required coverage.
Section 10-4-708.	Prompt payment of direct benefits.
Section 10-4-709.	Coordination of benefits.
Section 10-4-710.	Required coverages are minimum.
Section 10-4-711.	Required provision for intrastate and interstate operation.



Section 10-4-713.	No tort recovery for direct benefits.
Section 10-4-714.	Limitation on tort actions.
Section 10-4-715.	No limitation on tort action against non-complying tort-feasors.
Section 10-4-717.	Intercompany arbitration.
Section 10-4-718.	Quarterly premium payments.
Section 10-4-719.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 7.
Section 10-4-719.5.	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.
Section 10-4-719.7.	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.
Section 10-4-720.	Cancellation - renewal - reclassification.
Section 10-4-721.	Exclusion of named driver.
Section 10-4-724.	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course - legislative declaration.
Section 10-4-725.	Certification of policy and notice forms.
Regulation 1-1-6.	Certification of forms
Regulation 1-1-7.	Market Conduct Record Retention.
Regulation 1-1-8.	Penalties And Timelines Concerning Division Inquires and Document Requests
Regulation 5-1-2.	Application and Binder Forms.
Regulation 5-1-10.	Rate and Rule Filing Regulation
Regulation 5-1-16.	Limitations on the Use of Credit Information or Ins. Scoring.
Regulation 5-2-1.	Relative Value Schedule for No Fault.
Regulation 5-2-2.	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-3.	Auto Accident Reparations Act (No Fault) Rules and Regulations.
Regulation 5-2-6.	Automobile No Fault Cost Containment Options.
Regulation 5-2-8.	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9.	Personal Injury Protection Examination Program.
Regulation 5-2-12.	Concerning Automobile Insurance Consumer Protections
Regulation 6-1-1.	Limiting coverage.
Regulation 6-2-1.	Complaint Record Maintenance.

### **Company Operations and Management**

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

### **Complaints**

The examiners reviewed and compared the complaint log maintained by the Division of Insurance against the Company's complaint log to verify the accuracy of the Company's tracking system. The examiners also evaluated the Company's complaint handling methodology and reviewed the reason for and disposition of complaints.

**Producers**

The examiners reviewed new business applications written in the State of Colorado for the period under examination and compared those documents against the list of producers provided by the Company.

**Contract Forms and Endorsements**

The following Private Passenger Automobile forms and endorsements were reviewed for compliance applicable to the period under examination as filed with the Colorado Division of Insurance.

Title	Form	Edition
Policy Jacket	Auto 3615	6/98
Policy Declaration	Auto 3079	4/93
General Change Endorsement	0605A	5/84
Operator Restriction Endorsement	AS1003M	
Christian Science Endorsement	AS1004	6/94
Agency Authorization Endorsement	AS1005M	
Mexico Extension Endorsement	AS1006	12/89
Itemized Change Endorsement (AIP)	AS1008	11/90
Notice to Others is [sic] Cancellation Occurs	AS1019	12/89
Automatic Termination Endorsement	AS1046	12/89
Additional Insured-Lessor	AS1187	11/90
PPO Coverage Endorsement	AS2030	04/97
Extended Transportation Expense Coverage-Collision	AS2042	6/98
New Vehicle Replacement Cost Coverage	AS2112	10/99
Coverage for Audio, Visual and Data Electronic Equipment, Tapes, Records, Discs, and other Media	AS2130	6/98
Group Savings Plus—CO	AS2135	12/00
New Vehicle Replacement Cost Coverage (Subaru Advantage)	AS2174	10/02
Amendment of Policy Provisions—CO	PP 01 61	6/01
Suspension of Insurance	PP02 01	8/06
Reinstatement of Insurance	PP02 02	8/86
Fed Employees Using Auto in Government Business	PP03 01	8/06
Increased Limits Transportation Expense Coverage	PP03 02	6/98
Towing and Labor Costs Coverage	PP03 03	4/86
Loss Payable Clause	PP03 05	8/86

Extended Non - Owned Coverage for Named Individual	PP03 06	6/94
Covered Property Coverage	PP03 07	06/98
Coverage for Damage to your Auto	PP03 08	6/94
Split Liability Limits	PP03 09	06/98
Customizing Equipment Coverage	PP03 18	06/98
Snowmobile Endorsement	PP03 20	6/98
Named Non-Owner Coverage	PP03 22	6/98
Miscellaneous Type vehicle endorsement	PP03 23	06/98
Certificate of Insurance-Trusts	PP03 33	06/98
Joint Ownership Coverage	PP03 34	06/98
Auto Loan/Lease Coverage	PP03 35	9/93
Mexican Collision Coverage-Colorado	PP03 57	6/98
Split Uninsured Motorists Limits	PP04 01	6/98
Uninsured Motorists Coverage-CO	PP04 25	3/99
Property Damage Uninsured Motorists Coverage-CO	PP04 37	6/98
Coverage for Damage to Your Auto	PP13 01	12/99
Miscellaneous Endorsement	102R1	
Notice of Cancellation	2252	Ed.1
Important Notice (Change in Annual Meeting)	2323	
Change of Facsimile Signature	2330 R1	
LMIC Notice of Membership in Liberty Mutual Holding Co	2343E	
LMFIC Notice of Membership in Liberty Mutual Holding Co	2344	
If You Have an Accident Brochure	Auto 1256R37	
Colorado Summary Disclosure Form	Auto 2369R9	
Fair Credit Reporting Act	Auto 1465R17	
Auto Rating Information Form	Auto 34690	
Billing Information Form	Auto 3472R4	
Rating Information Form	Auto 3382R4	
Roadside Assistance Form	Auto 3463R2	
Liberty Guard Personal Auto Policy	Auto 3615	6/98
Policy Questionnaire	Auto 2942R6	
Policy Update Information	Auto 3057R3	
CO Rating form	Auto 3638	
Auto Policy Update	Auto 3709	

Increase Due to Accident/Ticket After Quoting	Auto 3712	
CLUE Notice	Auto 3713	
Colorado Uninsured Motorists Option Form	PMKT83R9	
Short Mileage Verification Form	PMKT136R3	
Colorado Uninsured Motorists Option Form (LIC)	PMKT213LICR6	
Renewal Questionnaire	PMKT310R3	
New Business Cancellation Notice	Auto FL92CO	2/87
Midterm and Non Renewal Notice	Auto 1714R8	
Reinstatement Letter	Auto FL282	6/88
Notice of Premium Increase of Reduction in Coverage	Auto 1715R7	
Notice of Action Taken Due to Information Contained in a Consumer Report	FL10	2/87
Notice of Cancellation of Notice of Non-renewal	Auto 36263	
Notice of Premium Increase/Notice of Reduction of Coverage	Auto 3624	

### **Underwriting**

The examiners reviewed Company procedures and practices for converting policies from PIP to tort liability to verify compliance with Colorado Division of Insurance policies and procedures and Colorado Insurance regulations. The review included specific samples of converted private passenger automobile and motorcycle policies.

**New Business /Cancellations/Nonrenewals/Surcharges/Rejections/Renewals**

For the period under examination the examiners systematically selected the following underwriting samples to determine compliance with underwriting practices:

Review Lists	Population	Sample Size	Percentage to Population
In-force Business	20502	100	5%
Non-renewals	89	50	56%
Cancel-59 Days**	9	9	100%
Cancel for Cause <i>after</i> 59 Days*	15	15	100%
Cancel Non Pay	914	50	6%
Surcharges	1304	50	4%

**Rating**

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was then compared against a sample of new business and renewal policies, rated by coverage, to determine compliance with base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations.

**Claims**

For the period under examination the examiners systematically selected the following samples to determine compliance of claims handling practices and claims manual rules:

Review Lists	Population	Sample Size	Percentage to Population
PIP Claims Paid	537	50	9%
All other Paid Claims	3511	50	2%
Denied /CWP	2742	50	2%

\* 59 day cancel run contained 3 policies canceled *after* 59 days

\*\* 59 day cancel run contained 3 policies canceled *after* 59 days

### **EXAMINATION REPORT SUMMARY**

The examination resulted in five (5) issues arising from the Company's apparent failure to comply with Colorado statutes and regulations that govern all property and casualty insurers operating in Colorado. These issues involved three (3) of the five (5) categories of Company operations examined as follows:

**Company Operations and Management:** In the area of company operations and management, two (2) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements that must be followed by the Company in the issuance, cancellation, and non-renewal of policies of insurance. It is recommended that the Company review its operating and management practices and procedures and make the changes necessary to ensure future compliance with applicable statutes and regulations. The issues in this area are:

- Failure, in some cases, to provide a quarterly premium payment plan.
- Failure, in some cases, to maintain records.

**Complaint Handling:** In the area of complaint handling, no compliance issues are addressed in this report.

**Producers:** In the area of producers, no compliance issues are addressed in this report.

**Underwriting and Rating:** In the area of underwriting and rating, two (2) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements that must be complied with whenever policies are canceled, non-renewed, premiums increased or decreased, or surcharged. It is recommended that the Company review its underwriting and rating practices and procedures and make the changes necessary to ensure future compliance with applicable statutes and regulations as to each issue.

- Failure to include a provision in the Company's underwriting guidelines for excluding a named driver in some cases.
- Cancellation of coverage after fifty-nine (59) days in some cases, for reasons not allowed by Colorado insurance law, and failure in some cases, to clearly describe the underwriting rule, policy or guideline which is the basis for non-renewing a policy.

**Claims:** In the area of claims, one (1) compliance issue is addressed in this report. This issue arose from Colorado statutory and regulatory requirements dealing with the payment of claim benefits and the timeliness of claim payments. It is recommended that the Company review its claims practices and procedures and make the changes necessary to ensure future compliance with applicable statutes and regulations in this area.

- Failure, in some cases, to timely pay PIP benefits.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance. Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Colorado Division of Insurance.

**LIBERTY MUTUAL FIRE INSURANCE COMPANY**

**PERTINENT FACTUAL FINDINGS**

**PRIVATE PASSENGER AUTO**

**PERTINENT FACTUAL FINDINGS**  
**OPERATIONS AND MANAGEMENT**



**Issue A: Failure, in some cases, to provide a quarterly premium payment plan.**

Section 10-4-718, C.R.S., Quarterly premium payments, provides:

The commissioner shall issue rules establishing quarterly, semiannual, and annual premium payments for persons who are required to purchase insurance under this part 7. An insurer providing a plan for payments on a basis that is more frequent than quarterly need not also provide a quarterly payment plan. An insurer's plan for payments may provide for payments of an advance deposit premium.

Section 10-4-625, C.R.S. Quarterly premium payments, effective July 1, 2003, provides:

The commissioner shall issue rules establishing quarterly, semiannual, and annual premium payments for persons who are required to purchase insurance under this part 6. An insurer providing a plan for payments on a basis that is more frequent than quarterly need not also provide a quarterly payment plan. An insurer's plan for payments may provide for payments of an advance deposit premium.

Colorado Insurance Regulation 5-2-3, Auto Accident Reparations Act (No-Fault) Rules and Regulations, promulgated by the Commissioner of Insurance under the authority of Section 10-1-109, C.R.S., provides in part:

**D. Installment Premium Payments**

1. Each insurer continuing private passenger motor vehicle insurance coverage in conformity with the Colorado Automobile Reparations Act shall offer, for persons who are required to purchase insurance under Part 7 of Title 10, Article 4, C.R.S., a quarterly premium payment plan. An insurer, providing a plan for payments of premium on a basis that is more frequent than quarterly, need not also provide a quarterly payment plan.
2. Each insurer shall be required to file rules, methods or procedures to provide an installment premium payment plan.
3. An insurer's premium payment plan that is more frequent than quarterly may provide for payments of an advance deposit premium not greater than one month's premium.

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of Section 10-1-109, C.R.S., provides, in part:

Section 5 Rules

A. Installment Premium Payments

1. Each insurer continuing private passenger motor vehicle insurance coverage in conformity with the Colorado Automobile Reparations Act shall offer, for persons who are required to purchase insurance under Part 6 of Title 10, Article 4, C.R.S., a quarterly premium payment plan. An insurer, providing a plan for payments of premium on a basis that is more frequent than quarterly, need not also provide a quarterly payment plan.
2. Each insurer shall be required to file rules, methods or procedures to provide an installment premium payment plan.
3. An insurer's premium payment plan that is more frequent than quarterly may provide for payments of an advance deposit premium not greater than one month's premium.

The Company's underwriting manual states, on page 6 of 33:

**BINDING NEW APPLICANTS (LMFIC & LIC)**

**Down Payment**

A deposit must accompany each new business automobile application. ... *A 100% down payment will be required* for operators who have had coverage terminated during the past 12 months due to non-payment of premium. [Emphasis added.]

On page 8 of 33:

**NON-PAYMENT CANCELLATION REWRITES**

Credit Department approval is not required for the rewrite of policies canceled by Liberty for non-payment of premium if the balance due from the canceled policy and *the full premium for the rewrite* are submitted with the application.

Down Payment Amount Guidelines:

- Exceptions to the 100% down requirement should rarely, if ever, be made. Exceptions are warranted when:
- The non-pay was due to an error on the part of Liberty Mutual.
- A newly written customer is cancelled subsequent to the first or second bill due to confusion about our billing system.

- A customer on salary deduction is cancelled for not paying a direct bill resulting from a policy change.

The following guidelines should be used when making down payment exceptions for reasons other than those cited above:

- Exceptions should not be made for non-payment cancellations during the initial year of coverage.
- In the event an exception is made for either new business or renewal customers, rarely should the down payment amount be less the 50%
- In the event of a second non-payment cancellation during the past 36 months, LMFIC customers should only be offered LIC with a 100% down payment. Customers already insured in LIC, should not be offered a rewrite.

On Page 9 of 33:

#### **PREVIOUS TERMINATION**

A 100% down payment will be required for operators who have had coverage terminated during the past 12 months due to non-payment of premium.

Failure to offer a quarterly premium payment plan to all applicants, policy reinstatements and policy rewrites may be a violation of Colorado insurance law.

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#### **Recommendation #1:**

Within 30 days the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-718 and 10-4-625, C.R.S., and Colorado Insurance Regulations 5-2-3 and 5-2-12. If the Company is unable to provide such documentation, it should be required to provide documentation demonstrating that it has corrected its practices and procedures to ensure that a quarterly payment plan is offered in compliance with Colorado insurance law.

**Issue B: Failure, in some cases, to maintain records required for market conduct purposes.**

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated by the Commissioner of Insurance under the authority of Section 10-1-109, C.R.S. provides, in part: ...

**B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES**

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

- a. The application for each policy, if any;
- b. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and
- c. Other information necessary for reconstruction of the rating and underwriting of the policy.

3. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar year

**Policies surcharged**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
1304	50	5	10%

An examination of 50 policies, representing 4% of all policies surcharged by the Company in Colorado during 2003, showed five (5) exceptions (10% of the sample) in which the Company failed to retain a copy of the notice of increase letter sent to the policyholder.

**All other Paid Claims**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
3511	50	1	2%

An examination of 50 policies, representing 2% of all other claims handled by the Company in Colorado during 2003, showed one (1) exception (2% of the sample) in which the Company failed to retain a copy of a hand written claim payment check.

Failure to retain records required for market conduct purposes may be a violation of Colorado Insurance.

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**Recommendation #2:**

Within 30 days the Company should demonstrate why it should not be considered to be in violation of Colorado Insurance Regulation 1-1-7. If the Company is unable to provide such documentation, it should be required to provide documentation demonstrating that it has corrected its record retention practices and procedures and implemented a plan to ensure compliance with Colorado insurance law.

**PERTINENT FACTUAL FINDINGS**

**UNDERWRITING AND RATING**

**Issue C: Failure to include a provision in the Company's underwriting guidelines for excluding a named driver in some cases.**

Section 10-4-719.7, C.R.S., Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited, states, in part:

(b)(I) No insurer shall refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-721 in the household if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include as part of such renewal a written notice naming the party specifically excluded from coverage.

Section 10-4-721, C.R.S., Exclusion of named driver, states, in part:

(1) In any case where an insurer is authorized under this part 7 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, *the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, [emphasis added] the person whose claim experience or driving record would have justified the cancellation or nonrenewal.* The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

Section 10-4-628, C.R.S., Refusal to write-changes in-cancellation-nonrenewal of policies prohibited, effective July 1, 2003, states, in part:

(b)(I) An insurer shall not refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-629 if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include as part of such renewal a written notice naming the party specifically excluded from coverage.

Section 10-4-630, C.R.S., Exclusion of named driver, effective July 1, 2003, states, in part:

(1) In any case where an insurer is authorized under this part 6 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record or one or more but less that all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. ...

The company's underwriting manual exception pages, Colorado (02-17-2003) states, on page 1 of 3:

**New Business-Basic Binding Rules . . .**

**Number of Occurrences**

Households and operators are subject to a maximum number [sic] occurrences during the experience rating period. An occurrence is any moving violation conviction or AF Accident. ...

(1) each *operator* has no more than 3 occurrences **and** (2) each *household* has no more occurrences than are specified on the chart below. [Emphasis added.]

#of Autos Per Household	Maximum # of Occurrences
4 or more	4
3	3
2	2
1	1

The use of occurrences per household as the basis for issuing policies of insurance, rather than making an offer of a named driver exclusion, where applicable, appears to be a violation of Colorado insurance law.

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**Recommendation #3:**

Within 30 days the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-719.7, 10-4-721, 10-4-628 and 10-4-630, C.R.S. If the Company is unable to provide such documentation, it should be required to provide documentation demonstrating that it has corrected its practices and procedures when issuing or renewing policies of insurance and has implemented a plan to ensure compliance with applicable Colorado insurance law.



**Issue D: Cancellation of coverage after fifty-nine (59) days in some cases, for reasons not allowed by Colorado insurance law, and failure, in some cases, to clearly describe the underwriting rule, policy or guideline which is the basis for non-renewing a policy.**

Section 10-4-602, C.R.S., Basis for cancellation, states:

- (1) A notice of cancellation of a policy shall be valid only if it is based on one or more of the following reasons:
  - (a) Nonpayment of premium; or
  - (b) The driver's license or motor vehicle registration of either the named insured or any operator either residing in the insured's household or who customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding its effective date; or
  - (c) An applicant knowingly made a false statement on the application for insurance; or
  - (d) An insured knowingly and willfully made a false material statement on a claim submitted under the policy.
- (2) This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

Section 10-4-629, C.R.S., Cancellation – renewal - reclassification, states:

- (1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.
- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:

- (c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the *basis* [emphasis added] for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

Section 10-4-720, C.R.S., Cancellation – renewal - reclassification, states:

- (3) Except in accordance with the provisions of this part 7, no insurer shall cancel or fail to renew a policy of insurance which complies with this part 7, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 7.
- (4) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form which has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:
  - (c) The insurer's actual reasons for proposing to take such action. *The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis* [emphasis added] for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

Colorado Insurance Regulation 5-2-3, Auto Accident Reparations Act (No Fault) Rules and Regulations, promulgated by the Commissioner of Insurance under the authority of Sections 10-1-109, 10-4-704, 10-4-704, and 42-1-204, C.R.S., amended effective February 1, 1998, December 1, 2000, and May 1, 2001, states, in part:

- E. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages
  - 2. Notice of proposed actions.

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-720 (2), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. *The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable* and may cause the insurer's proposed action to be disallowed. [Emphasis added.]

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of Sections 10-1-109, effective July 1, 2003, states, in part:

**B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages**

**2. Notice of proposed actions.**

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-629(2)(c), C.R.S. Only one notice is required to be sent to the policyholder. The statement of reasons shall be clear and specific so that a reasonable person can understand it. For purposes of this notice, "clear and specific" shall mean the inclusion of the following:
  - (1) Clear indication of the action contemplated by the insurer, i.e., premium increase, reduction in coverage, non-renewal or cancellation;
  - (2) Clear summary of the underwriting guideline or rule that supports the action, i.e., more than one speeding traffic violation in a six month period, more than one at-fault accident in a two-year period, etc.;
  - (3) Clear description of the nature of the at-fault accident, including the date and location; and
  - (4) The complete legal name of the person upon whom the action is based, as evidenced by the insurer's records.

**Policies cancelled after 59 days**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
18	18	3	17%

The examiners identified three (3) instances in which policies were cancelled after fifty-nine (59) days for reasons not allowed by Colorado insurance law. The three (3) exceptions were discovered when policies included on the run of policies presented to the examiners as *cancelled within fifty-nine (59) days* contained three (3) policies *cancelled beyond fifty-nine (59) days*. These three (3) policies were added to the count of policies cancelled after fifty-nine (59) days.

These three (3) exceptions are as follows:

- One (1) policy was cancelled “due to insured’s failure to return a signed application to verify the selected coverages on this policy”;
- One (1) policy was cancelled for “failure to provide correct information necessary to underwrite and rate this policy”;
- One (1) policy was cancelled for “failure to provide accurate underwriting information.”

Cancelling policies that have been in force for more than fifty-nine (59) days for impermissible reasons may be a violation of Colorado insurance law.

Policies non-renewed			
Population	Sample Size	Number of Exceptions	Percentage to Sample
89	50	3	6%

An examination of fifty (50) policies, representing 56% of all policies non-renewed by the Company in Colorado during 2003, showed three (3) exceptions (6% of the sample) in which the Company failed to clearly describe its underwriting rule policy or guideline in the notice of non-renewal which was the basis for non-renewal.

The exceptions occurred because the non-renewal notices only stated (name) is suspended.

Failure to describe clearly the underwriting rule, policy or guideline which is the basis for non-renewing or canceling a policy may be a violation of Colorado insurance law.

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#### **Recommendation # 4:**

Within 30 days the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-720 and 10-4-629, C.R.S., and Colorado Insurance Regulations 5-2-3 and 5-2-12. If the Company is unable to provide such documentation, it should be required to provide documentation demonstrating that it has corrected its non-renewal and cancellation practices and procedures to ensure compliance with Colorado insurance law.

**PERTINENT FACTUAL FINDINGS**

**CLAIMS PRACTICES**

**Issue E: Failure, in some cases, to timely pay PIP benefits**

Section 10-4-708 (1), C.R.S., Prompt payment of direct benefits, states:

Payment of benefits under the coverages enumerated in section 10-4-706 (1)(b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same.

Colorado Insurance Regulation 5-2-8, Timely payment of Personal Injury Protection benefits, promulgated by the Commissioner of Insurance under the authority of Sections 10-1-109, 10-4-704, 10-4-708(1.3) and 10-3-1110(1), C.R.S., effective November 1, 1997, amended September 1, 2000, provides, in part:

**B. Prompt Payment of PIP Benefits**

Section 10-4-708(1), C.R.S., provides that benefits under the coverages enumerated in Section 10-4-706, C.R.S., are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

Section 10-4-708(1), C.R.S., allows for the accumulation of claims expense for periods not exceeding one month and provides that benefits are not overdue if paid within 15 days after the end of a defined period of accumulation. An insurer is permitted by this statute to pay a bill within 15 days after the end of a defined accumulation period only when there is a reasonable likelihood that multiple providers are involved and more than one bill is received during the accumulation period.

**C. Requirements Establishing Proof of the Fact and Amount of Expenses Incurred**

**1. Medical and Rehabilitative PIP benefits**

In the usual case, for purposes of triggering the 30-day time period described in Section 10-4-708(1), C.R.S., the following documents are sufficient to establish reasonable proof of the fact and amount of the expenses incurred for covered medical and rehabilitative PIP benefits:

- a. A properly executed application for benefits from the PIP claimant; and

- b. An initial notice to the insurer from the provider of benefits which meets the requirements of Section 10-4-708.5, C.R.S. or a billing statement for the procedure or treatment which complies with Section 10-4-708.6, C.R.S., and includes pursuant to Section 10-4-708.5 the following:
- (1) The name and address of the treating health care provider;
  - (2) The evaluation of diagnosis, and the medical procedure performed or the medical treatment provided; and
  - (3) An itemized statement of charges corresponding to the medical service or treatment provided along with corresponding dates of service.

**PIP Claims Paid**

Population	Sample Size	Number of Exceptions	Percentage to Sample
537	50	12	24%

An examination of fifty (50) paid claims, representing 9% of all PIP claims paid by the Company in Colorado during 2003, showed twelve (12) exceptions (24% of the sample) in which the Company failed to pay benefits within the statutory standard of 30 days.

Failure to pay PIP claims within the 30 day statutory period may be a violation of Colorado insurance law.

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**Recommendation # 5:**

Within 30 days the Company should demonstrate why it should not be considered to be in violation of Section 10-4-708, C.R.S. and Colorado Insurance Regulation 5-2-8. If the Company is unable to provide such documentation, it should be required to provide documentation demonstrating that it has reviewed all procedures related to the timeliness of claims handling and has implemented all necessary changes to ensure compliance with Colorado insurance law.

**Market Conduct Examination  
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